THE HON'BLE SRI JUSTICE V.ESWARAIAH

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+ WRIT PETITION No.6679 OF 2004

&

CONTEMPT CASE No.586 OF 2004

% Dated 03.09.2004

Dr. G. Venkateshwar Rao, S/o. G. Gopal Reddy Naidu,
R/o. Golnaka. Alwal, Secunderabad

…. PETITIONER

Vs.

$ 1. The Centre for DNA Finger Printing and Diagnostics (CDFD)

rep.by its Director, ECIL Road, Nacharam, Hyderabad.

2. Dr. Seyed E. Hasnain, Director, Centre for DNA Finger

Printing and Diagnostics (CDFD), ECIL Road, Nacharam

Hyderabad.

…. RESPONDENTS

! Counsel for Petitioner: Mr. M. PANDURANGA RAO

^Counsel for Respondents: Mr. Dr. P.B. VIJAY KUMAR

<GIST:

> HEAD NOTE:

? Cases referred

1. 1997 SCC (CRL) 462
2. (1990) 1 SCC 193

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF SEPTEMBER

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 6679 of 2004

&

CONTEMPT CASE No.586 OF 2004

Between:

Dr.G.Venkateshwar Rao, s/o G.Gopal Rao Naidu, r/o Golnaka, Alwal, Secunderabad.

... PETITIONER

AND

1 The Centre for DNA Finger Printing and Diagnostics (CDFD), rep., by its

Director, ECIL Road, Nacharam, Hyderabad.

2 Dr.Seyed E.Hasnain, Director, Centre for DNA Fingerprinting and Diagnostics (CDFD), ECIL Road, Nacharam, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction particularly one in the nature of writ of mandamus declaring the inaction of the 1st respondent in not acting on the basis of the acquittal by the Criminal Court when he was prompt to take action on the basis of conviction as wholly illegal, arbitrary and mala fide and consequently directing the 1st respondent to immediately reinstate the petitioner into service with all consequential benefits

Counsel for the Petitioner: MR.M.PANDURANGA RAO

Counsel for the Respondents: Dr. P.B.VIJAY KUMAR

The Court made the following order:

ORDER:

The Petitioner filed this writ petition seeking to issue a Writ of Mandamus declaring the action of the respondent in not acting on the basis of the acquittal by the Criminal Court when he was prompt to take action on the basis of conviction as illegal and arbitrary and to direct the first respondent to reinstate him into services with all consequential benefits. As *mala fides* are also attributed to the Director of the first respondent the said Director is made a party-in-person as second respondent.

The first respondent is a Centre for DNA Finger Printing and Diagnostics (CDFD), represented by its Director. The first respondent though registered under Andhra Pradesh Public Societies Registration Act, its Governing Council consists of the Senior Government Officials headed by the Chairman of rank of Secretary, Government of India. The first respondent is funded by the Government of India and the charges collected by the first respondent from the public and investigating agencies to provide DNA Finger Printing and related services are credited to the Government Treasury/Sub-Treasury/Reserve Bank of India or in any of the nationalized banks. Therefore, it is not disputed that the first respondent is an authority within the meaning of Article 12 of the Constitution of India amenable to the writ jurisdiction of this Court. The first respondent society has not framed any rules and it has adopted the rules of the Government of India applicable to its employees.

The petitioner married one Ms. Kamala, who was then working as Assistant Manager in Vijaya Bank on 19.08.1994. A child was also born to them on 27.05.1995. While so, his wife gave a complaint against him and his parents before Alwal Police Station, which was registered as Crime No.234 of 1995 on 05.12.1995, for the offences said to have been committed by them under Section 498-A IPC and Sections 4 and 6 of Dowry Prohibition Act (for short 'the Act'). The police filed a charge sheet in CC.No.262 of 1996 on the file of the Judicial First Class Magistrate, Medchal, Ranga Reddy District. The learned Magistrate by judgment dated 08.07.2002 convicted the petitioner and his parents for the offences under Section

498-A IPC and section 4 of the Act and sentenced them to undergo simple imprisonment for one year each for two counts and also to pay a fine of Rs.500/- in default to suffer simple imprisonment for one month each for two counts and acquitted for the offence under Section 6 of the Act.

While so the criminal case was pending on the file of the Judicial First Class Magistrate, Ranga Reddy District, in CC.No.262 of 1996 the petitioner was appointed into the first respondent society as Scientist in 1997 to provide DNA Finger Printing services in criminal and civil cases. It is stated that the main objective for establishing the first respondent society was to provide DNA Finger Printing Analysis to Crime Investigating Agencies and also to assist Police, Forensic Scientists Lawyers and Judiciary in understanding evidential value of DNA Finger Printing Analysis and its applicability in crime investigation and private matters. The petitioner was appointed as Chief and Staff Scientist – III at the respondent organization to head the DNA Finger Printing Laboratory of CDFD. While working the Criminal Court convicted the petitioner and therefore he was placed under suspension by the first respondent vide its order dated 26.08.2002. Aggrieved by the said judgment dated 08.07.2002 of the learned Magistrate, the petitioner filed Crl.A.No.120 of 2002 on the file of IV Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District.

While the criminal appeal was pending the first respondent issued a notice dated 23.06.2003 as to why a proper action shall not be taken against the petitioner under the provisions of Rule 19 of Central Civil Services (Classification – Control – Appeal) Rules, 1965, taking into account the gravity of criminal offence, conviction and sentence for the charges under Section 498-A IPC and Section 4 of the Act as per the judgment dated 08.07.2002 in CC No.262 of 1996 on the file of Judicial First Class Magistrate, Ranga Reddy District, he was given an opportunity to explain as to why penal action should not be taken against him, asking him to appear in person on 07.07.2003 and followed by another office memo dated 08.08.2003 to submit a representation within 15 days from the date of receipt of the said memorandum.

The petitioner filed WP.No.17632 of 2003 questioning the proceedings dated

23.06.2003 and 08.08.2003 to declare them as illegal and against the principles of natural justice and to set aside the same as criminal appeal filed by the petitioner in Crl.A.No.120 of 2002 was pending on the file of the IV Additional District and Sessions Judge, Ranga Reddy District. The said writ petition was disposed of by order dated 27.08.2003 declining to interfere with the said orders, but however, the petitioner was granted four weeks time to submit his representation as directed in the said proceedings and till then the respondents are directed not to take any further action against the petitioner pursuant to the said proceedings. After filing the representation it was open for the respondents to proceed against the petitioner as per the rules in force. It is stated the petitioner made a representation about the non-payment of subsistence allowance for July 2003 on 12.09.2003.

It is the case of the petitioner that during the pendency of the Crl.A.No.120 of 2002 the appellate Court suspended the sentence and imprisonment vide Crl.MP.No.1193 of 2002 dated 17.07.2002 and therefore he has submitted a representation informing the respondents that criminal appeal is pending and is likely to be disposed of any time and in spite of his representation dated 12.09.2003 pointing out that he was not paid any subsistence allowance for the month of July 2003 and also without giving any reasonable opportunity of submitting the explanation the respondent promptly passed the order dated 24.09.2003 imposing the major penalty of dismissal from service. It is stated that four weeks time from the date of passing of the order dated 27.08.2003 in WP.No.17632 of 2003 expires by 24.09.2003 and the respondent promptly passed the order of imposing the major penalty of dismissal from service stating that the petitioner has failed to make a representation within four weeks from the date of the order dated 27.08.2003 in WP.No.17632 of 2003.

The Crl.A.No.120 of 2003 was allowed by judgment dated 27.01.2004 setting aside the judgment of the lower Court and the accused were acquitted from the charges of the sentence imposed by the lower Court. Pursuant to the acquittal of the petitioner in the said Crl.A.No.120 of 2002 dated 27.01.2004 the petitioner filed representations dated 27.01.2004, 26.02.2004 and 10.03.2004, in response to the same the Administrative Officer of the first respondent society vide its letter dated 12.03.2004 informed the petitioner that his request is under examination by the

competent authority. As no action has been taken, the petitioner filed another representation dated 23.03.2003. As the respondent has not taken any action the respondent filed this writ petition on 06.04.2004. The writ petition was admitted on 07.04.2004 and notice was issued in WP.MP.No.8660 of 2004, which filed to direct the first respondent to reinstate the petitioner forthwith. This Court by order dated 13.04.2004 made the following the order:

> "The first respondent is directed to forthwith consider the case of the petitioner for reinstatement, in view of his acquittal vide judgment dated 27.01.2004 in Crl.A.No.123 of 2003. The first respondent shall consider the reinstatement of the petitioner, to recall the earlier order dated 24.09.2003, whereby, the petitioner has been dismissed from services as Staff Scientist – III, on the ground of his conviction for the charges under Section 498-A IPC and Section 4 of the Act. As the conviction has been reversed by the appellate Court, the first respondent shall consider the case of the petitioner as directed".

The respondents filed a review WP.MP.No.10892 of 2004 to review the order dated 13.04.2004 in the said WP.MP.No.8660 of 2004 on the ground that the learned Session Judge in Crl.A.No.120 of 2002 held that the accused are entitled to acquittal from the charges under Section 498-A IPC and the appeal was allowed setting aside the judgment of the lower Court and the accused were acquitted from the charges and sentence imposed by the lower Court for the offence under Section 498-A IPC and fine amount, if any paid, shall be returned to the accused. As the conviction under Section 4 of the Act is not set aside, the writ petition is not maintainable. The said review petition was numbered only on 28.04.2004.

In the mean while, the petitioner filed Contempt Case No.586 of 2004 to punish the respondents for committing contempt of the orders of this Court for willfully disobeying the orders passed on 13.04.2004 contending that the action of the respondents in filing the said review petition is a willful contempt and the respondent is bent upon to violate the orders of this Court on some or the other technical ground.

The petitioner having realized that the learned Session Judge failed to mention

Section 4 of the Act in the operative portion, he filed the Crl.MP.No.176 of 2004 dated 06.05.2004 before the IV Additional District and Sessions Judge to correct the clerical error occurred in the said judgment in not mentioning Section 4 of the Act. The learned Sessions Judge allowed the said petition holding that due to mistake Section 4 of the Act was not mentioned in the last Para of the judgment and accordingly held that the said error occurred due to oversight and it was not typed in the judgment and it is only an omission on the part of the Court and also accidental mistake which can be rectified under Section 362 Cr.P.C. and the said correction would not amount to review of the judgment and accordingly allowed the said petition and corrected the judgment by adding Section 4 of the Act in Para 10 of judgment. After getting the clerical error corrected the petitioner filed the corrected judgment before this Court. The petitioner also filed a representation 11.05.2004 enclosing the corrected copy of the judgment of criminal appeal before the respondent for taking necessary action to recall the dismissal order in view of the said judgment as that was only the objection for the respondents which was rectified.

The respondents filed counters in the writ petition as well as the contempt case stating that the said action of the learned Sessions Judge in adding Section 4 of the Act in the operative portion of the judgment amounts to review of the said judgment and there is no such power to review under Section 362 of Cr.P.C and therefore, the said order of the learned Session Judge is illegal and *non est* in law. It is further stated that once judgment is announced in a criminal case the Judge, who pronounced the judgment, becomes *functus officio* and he has no power to review and therefore, the said corrected judgment cannot be acted upon.

Learned senior counsel appearing for the respondents submits that the review petition was filed even before filing the contempt case and the petitioner having realized that there was no acquittal for the offence under Section 4 of the Act, filed an application under Section 362 Cr.P.C. to correct the clerical error, but he learned Session Judge without power or authority corrected the said judgment which amounts to review and therefore, the said corrected judgment cannot be acted upon. It is further stated that the respondents cannot act on the amended order which was without jurisdiction and entertaining an application under Section 362 Cr.P.C. is an

abuse of process of law/Court as held in catena of decisions of the Apex Court. The respondents have nothing personal against the petitioner and they are acting as an Administrator bound by parameters of the law prescribed and therefore, there is no willful contempt on their part. The said amended order is vitiated for want of jurisdiction and is a nullity. As long as the petitioner was not acquitted for the under Section 4 of the Act there cannot be any acquittal by way of allowing the application under Section 362 Cr.P.C.

He further contended that insofar as the contempt case is concerned, it is stated that the order of this Court in WP.MP.8660 of 2004 dated 13.04.2004 to consider the petitioner for reinstatement was rejected by proceedings dated 27.04.2004 on the ground that the IV Additional District and Sessions Judge, Ranga Reddy District, has not set aside the conviction under Section 4 of the Act in Crl.A.No.120 of 2002 dated 27.01.2004. Since conviction by the lower Court under Section 4 of the Act is not set aside, no review of the dismissal order at this juncture is warranted. Further the review petition has been filed to review the said order dated 13.04.2004 and therefore, it cannot be said that the respondents have willfully violated the orders of this Court.

In support of his contentions the learned senior counsel for respondents relied on certain judgments of the Apex Court.

In case of **STATE OF ORISSA v. RAM CHANDER AGARWALA** the High Court considered the reference made by the learned Session Judge as regards to the sentence passed by the trial Court was not in accordance with law. The High Court while dismissing the revision petition preferred by the accused accepted the reference by the Sessions Judge and enhanced the sentence so far as the firms were concerned to a sum of Rs.3,900/- and as regards the Managers or Managing Partners, the High Court sentenced them to undergo six months rigorous imprisonment. The persons who were awarded the substantive sentence of imprisonment filed criminal miscellaneous petitions before the High Court for a review of its order. The High Court accepted the petitions for review and recalled its previous judgment imposing substantive sentence of six months' rigorous

imprisonment on the petitioners/accused but imposed a fine of Rs.3,900/- for all the offences. Against the said order of the High Court in reviewing its earlier sentence the State of Orissa carried the matter to Supreme Court. In those circumstances, the Apex Court held that under Section 362 Cr.P.C. no Court when it has signed its judgment shall alter or review the same except to correct the clerical error. The said embargo is also applicable to the High Court.

The learned counsel appearing for the respondents heavily relying on **SUSHIL KUMAR MEHTA v. GOBIND RAM BOHRA** contended that adding Section 4 of the Act after delivering the judgment pursuant to the application of the accused, in fact, amounts to review the earlier judgment and therefore, the said judgment is nullity and cannot be acted upon. There is no dispute as regards to the settled law that normally a decree passed by a Court of competent jurisdiction, after adjudication on merits of the right of the parties, operates as *res judicata* in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings it s validity cannot be questioned. A decree passed by a Court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. A decree passed by such a Court is nullity and is *non est*. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the Court to pass a decree, which cannot be cured by consent or waiver of the party. If the Court has jurisdiction but there is defect in its exercise, which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums. The doctrine of *res judicata* does not apply to a case of decree of nullity. If the Court inherently lacks jurisdiction consent cannot confer jurisdiction. This decision of the Apex Court has no application to the facts of the instant case.

The question that arises is whether the corrected order of the appellate court in criminal appeal amounts to reviewing the earlier judgment. It is to be noticed that neither the defacto complainant nor the State is aggrieved by the said order of the IV

Additional District and Sessions Judge, Ranga Reddy District, dated 06.05.2004 passed in Crl.MP.No.176 of 2004 allowing the said application for correcting the judgment. Further, the question that arises is whether the IV Additional District and Session Judge reviewed his earlier judgment or not. The learned Magistrate convicted the petitioner and his parents for the offences under Section 498-A IPC and Section 4 of the Act. A perusal of the judgment dated 27.01.2004 in Crl.A.No.120 of 2002 goes to show that the Sessions Judge considered the contention of the accused as regards to the offence punishable under Section 4 of the Act. He has discussed in Para 7 of his judgment with regard to the alleged demand of the dowry contrary to the Dowry Prohibition Act. A finding of fact has been recorded stating that there is no evidence to show that dowry was paid by father of the defacto complainant to the accused or his relatives as a consideration of the marriage of PW.1 with A.1. In the absence of any positive evidence about the payment of the amount to the accused or his relatives no inference can be drawn that the amount withdrawn from the account of PW.1 was paid to the accused in consideration of the marriage. Even the Investigating Officer admitted in his cross-examination that he did not collect any evidence to show the demand or payment of dowry. Accordingly, a clear finding of the fact has been recorded that if really there was a demand of dowry, deposits have to be withdrawn and might be paid towards dowry and additional dowry, but none of the deposits were withdrawn by PW.1. It clearly shows doubt on the case of the prosecution and strengthens the version of the defence that the accused did not demand any amount either at the time of the marriage or thereafter and neither PW.1 nor her parents gave any amount as alleged, as such the conviction under Section 4 of the Act cannot be sustained and is liable to be set aside.

The learned Sessions Judge with regard to the offence under Section 498-A IPC elaborately considered and in the operative portion while holding that the prosecution failed to prove the allegations against the accused beyond all reasonable doubt and the accused are entitled for acquittal for the charges under Section 498-A IPC and the appeal was allowed by setting aside judgment and the accused are liable to be acquitted of the charges and sentence imposed by the lower Court for the offence under Section 498-A IPC and fine amount, if any paid,

shall be returned to the accused. A perusal of the said operative portion clearly goes to show that not mentioning of Section 4 of the Act is a clerical error. Therefore, the learned Sessions Judge rectified the clerical error on the application filed by the accused in Crl.MP.No.176 of 2004 by order dated 06.05.2004. The learned Sessions Judge held that non mentioning of Section 4 of the Act in the resultant portion is only due to oversight and it is only an omission on the part of the Court and also it being a clerical mistake it can be rectified under Section 362 Cr.P.C. and accordingly held that the said correction of the clerical error cannot amount to review the judgment.

> Section 362: Court not to alter judgment: -
> "Save as otherwise provided by this Code or by any other law for the time being in force no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error".

The learned Sessions Judge having discussed as regards to the conviction of the sentence imposed by the trial Court for the offence under Section 4 of the Act, held that conviction under Section 4 of the Act cannot be sustained and is liable to be set aside. Therefore, non mentioning of Section 4 of the Act in the operative portion is only a clerical error, which was caused due to oversight and accordingly, I am of the opinion that the learned Session Judge rightly corrected the clerical error.

A clerical or arithmetical error occasioned by an accidental slip or omission of the Court and if the said error is apparent on the face of record and it does not depend for its discovery on a argument or disputation, it is only a clerical mistake and such mistake can be corrected.

The first respondent suspended the services of the petitioner only on the ground of conviction by the lower Court. The respondent is also empowered to impose appropriate penalty and punishment depending upon the gravity of the offence. Further, for the family misunderstandings and disputes, which led in conviction of the petitioner and his parents, the respondent thought fit to impose the extreme penalty of dismissing the petitioner from services and the petitioner was

dismissed from services. Under Rule 19 of the Central Civil Services (Classification – Control – Appeal) Rules, 1965, the petitioner can be imposed a penalty by the employer on the ground of conviction by a Criminal Court without holding any enquiry. But where a person is dismissed or removed on the ground of conviction of a criminal charge and if such conviction is set aside the employees are entitled for automatic reinstatement.

The respondents without going through the judgment in Crl.A.No.120 of 2002 dated 21.07.2004 read with order dated 06.05.2004 in Crl.MP.No.176 of 2004 of the learned Sessions Judge has taken a peculiar and unreasonable attitude towards the petitioner in disobeying the orders of this Court. The interim order dated 13.04.2004 was specific, unambiguous and clear in directing the respondents to consider the case of the petitioner as the sentence and conviction of Judicial First Class Magistrate reversed.

As the petitioner was removed from services on the ground of conviction for the offences under Section 498-A IPC and Section 4 of the Act, which was reversed by the lower appellate Court, I am of the opinion that the action of the respondent is unjust, unreasonable and without any justification in not reinstating the petitioner pursuant to the judgment in Crl.A.No.120 of 2002. Non mentioning of Section 4 of the Act in the operative portion of the judgment is a clerical error as there was a clear finding of fact in the body of the judgment that the conviction and sentence under Section 4 of the Act is unsustainable and liable to be set aside. Even after rectifying the said clerical error the respondent is bent upon to justify his action by way of filing the review and passing the rejection order for the petitioner’s reinstatement.

Accordingly, the writ petition is allowed with costs of Rs.5,000/- payable by the respondents to the petitioner. The respondents are directed to forthwith reinstate the petitioner pursuant to the acquittal of the petitioner for the offence under Section 498-A IPC as well as Section 4 of the Dowry Prohibition Act by the appellate Court in the Crl.A.No.120 of 2002.

Prima facie, for the aforesaid reasons, I am of the view that the respondents have willfully disobeyed the order of this Court in not reinstating the petitioner even after rectifying the clerical error in the judgment of the Crl.A.No.120 of 2002 on the file of the IV Additional District and Sessions Judge and therefore, the respondents are directed to file an explanation within 15 days to show cause as to why necessary sentence shall not be imposed for willful disobedience of the orders of this Court.

Post the contempt case for the appearance of the respondents on 20.09.2004.

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(V.ESWARAIAH, J)

September 3, 2004

Dsk

To

1. The IV Additional District and Sessions Judge, (Fast Track Court), Ranga Reddy District.
2. Dr. Seyed E. Hasnaian, Director, The Centre for DNA Finger Printing and Diagnostics, ECIL Road, Nacharam, Hyderabad.
3. The Centre for DNA Finger Printing and Diagnostics, ECIL Road, Nacharam, Hyderabad.
4. One CC to Mr. M. Pandu Ranga Rao, Advocate
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company, New Delhi.
6. The Secretary, AP Advocates Association Library, High Court Buildings, Hyderabad.
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